

**INTERGOVERNMENTAL AGREEMENT**

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE UNITED STATES DEPARTMENT OF AGRICULTURE  
TONGO NATIONAL FOREST

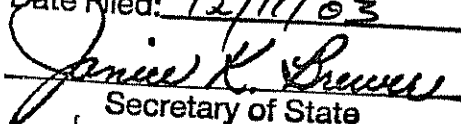
**THIS AGREEMENT** is entered into 11 December, 2003, pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the UNITED STATES DEPARTMENT OF AGRICULTURE, TONGO NATIONAL FOREST, acting by and through its Forest Supervisor (the "Tonto National Forest").

**I. RECITALS**

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.
2. The Forest Service is empowered by Cooperative Funds Act of June 30, 1914 (16USC 504) and has authorized the undersigned to execute this agreement on behalf of the Forest Service.
3. Incident to a highway improvement project contemplated by the State, on State Route (SR) 188, Resort Road-Devore Wash PHASE III Project Number: **PLH-038-1(32)**, TRACS Number: **H4076 01C**, the construction of the improvements will result in the permanent loss of 15.09 acres of waters of the United States owned or controlled by the Forest Service. The State agrees to be responsible for the of-site mitigation, through an in-lieu fee lump sum payment not to exceed \$150,900.00, all in accordance with the attached mitigation plan, herein referred to as the "Project".
4. The parties hereto agree and acknowledge to the following conditions: 1) The amounts referenced in this agreement are subject to change; 2) The estimated amounts can change substantially; and, 3) Both parties will perform their responsibilities consistent with the agreement.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

---

NO. 26477  
Filed with the Secretary of State  
Date Filed: 12/11/03  
  
Secretary of State

By: 

**II. SCOPE OF WORK**

## 1. The Forest Service will:

a. Upon execution of this agreement invoice the State a lump sum amount not to exceed \$150,900.00, for costs associated to complete the Project. Request for payment shall be submitted using the State's Progress Payment Report Form (Attached). Electronic forms can be requested through Joint Project Administration, at the address provided under Section III. Paragraph 9.

b. Deposit said \$150,900.00, with the Forest Service Cooperative Work Funds account until completion of the Project. Any monies not expended upon completion of the Project shall be returned to the State with a recapitulation of the Project costs.

c. Dedicate this in-lieu fee payment toward the conservation of riparian areas/wetland areas on the Forest Service, the restoration of riparian areas/wetland areas on the Forest Service, and/or the permanent acquisition of riparian/wetland land on the Forest Service.

d. Provide the State certified/recorded copies of all pertinent escrow closing statements, title insurance policies and instruments of conveyance associated with the acquisition of said riparian/wetland areas.

e. If land is acquired, be in accordance with applicable federal laws and policies with the appraisal conducted according to the Uniform Appraisal Standards for Federal Land Acquisitions (published by the Department of Justice, 2000).

f. Provide on an annual basis to the State, an accounting of the monies expended for the Project.

g. Any lands acquired by association with this Project, shall be zoned for uses beneficial to riparian and wetland management.

## 2. The State will:

a. Be responsible for a lump sum total amount not to exceed \$150,900.00, for costs associated to complete the Project.

b. Upon execution and within 30 days upon receipt and approval of an invoice from the Forest Service, remit to the Forest Service, a lump sum not to exceed \$150,900.00, for costs associated to complete the Project.

**III. MISCELLANEOUS PROVISIONS**

1. This agreement shall remain in force and effect until completion of said Project and final accounting. However, this agreement may be cancelled prior to the disbursement of funds transferred under this agreement with thirty (30) days written notice to the other party.

2. This agreement shall become effective upon signature of the parties and filing with the Arizona Secretary of State.

3. It is understood by the parties herein, The Project is intended to be complete within five years of approval. If the Project is not completed as noted herein, the parties may extend the agreement by Amendment.

4. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511 as it relates to conflicts of interest on behalf of State employees.

5. The provisions of Arizona Revised Statutes Section 35-214 relating to 5 year record retention for audit purposes are applicable to this contract.

6. Applicable laws of the State and Federal government shall govern the rights of the parties with respect to the performance of this agreement. The parties hereto shall select a process for the resolution of claims or disputes relating to this agreement that is compliant with applicable laws and regulations of the State and Federal government and acceptable to the State and Federal government. Such process will include a provision for non-binding arbitration.

7. No member of, or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this agreement, or to any benefits that may arise therefrom; but this provision shall not be construed to extend to this agreement if made with a corporation for its general benefit.

8. Any information furnished to the Forest Service under this instrument is subject to the Freedom of Information Act (5 U.S.C. 552).

9. Modifications within the scope of the instrument shall be made by mutual consent of the parties, by the issuance of a written modification, signed and dated by all parties, prior to any changes being performed.

10. Improvements placed on National Forest System land at the direction of either of the parties, shall thereupon become property of the United States, and shall be subject to the same similar nature. No part of this instrument shall entitle the cooperator to any share or interest in the project other than the right to use and enjoy the same under the existing regulations of the Forest Service.

11. The <sup>State</sup> cooperator has the legal authority to enter into this instrument, and the institutional, managerial and financial capability (including funds sufficient to pay nonfederal share of project costs) to ensure proper planning, management, and completion of the project. <sup>TJB</sup>

12. This instrument in no way restricts the Forest Service or the <sup>STATE</sup> cooperator(s) from participating in similar activities with other public or private agencies, organizations, and individuals. <sup>TJB</sup>

13. The instrument is executed as of the date of the last signature and is effective for five years from that date at which time it will expire unless extended.

14. Neither party shall incur any new obligations for the terminated portion of the instrument after the effective date and shall cancel as many obligations as possible. Full credit shall be allowed for each Party's expenses and all non-cancelable obligations properly incurred up to the effective date of termination.

15. The principal contacts for this instrument are:

Project Contact

Mr. Bahram Dariush,  
Statewide Project Management  
Arizona Department of Transportation  
205 South 17 Avenue, Mail Drop 614E  
Phoenix, AZ 85007  
Phone: (602) 712-8427  
FAX: (602) 712-1630

Administrative Contact

Lynn A. M. Grandy  
Joint Project Administrator  
Arizona Department of Transportation  
205 South 17 Avenue, Mail Drop 616E  
Phoenix, AZ 85007  
Phone (602) 712-8088  
FAX: 602-712-7424

Forest Service Project Contact

Tonto National Forest  
Mr. Terry Brennan  
2324 E. McDowell Road  
Phoenix, AZ 85006  
Phone: (602) 225-5200  
Fax: (602) 225-5295

Forest Service Administrative Contact

Tonto National Forest  
Ms. Robin Rowe  
2324 E. McDowell Road  
Phoenix, AZ 85006  
Phone: (602) 225-5200  
Fax: (602) 225-5295

16. Any <sup>State</sup> ~~cooperator~~ contributions made under this instrument do not <sup>y</sup> ~~by~~ direct reference or implication convey Forest Service endorsement of the ~~cooperator's~~ <sup>State</sup> products or activities. TJB 12/8/03

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

**US DEPARTMENT OF AGRICULTURE**

Tonto National Forest

By

K. Siderits  
KARL SIDERITS  
Forest Supervisor

Date

10/31/03

**STATE OF ARIZONA**

Department of Transportation

By

Susan Tellez  
SUSAN TELLEZ  
Contract Administrator

Date

11-14-03

The authority and format of this instrument  
Have been reviewed and approved for signature.

By

See attached  
LORETTA ORONA  
Grants & Agreements Specialist

Date

Page 4

JPA 03-049

Forest Service Project Contact  
Tonto National Forest  
Mr. Terry Brennan  
2324 E. McDowell Road  
Phoenix, AZ 85006  
Phone: (602) 225-5200  
Fax: (602) 225-5295

Forest Service Administrative Contact  
Tonto National Forest  
Ms. Robin Rowe  
2324 E. McDowell Road  
Phoenix, AZ 85006  
Phone: (602) 225-5200  
Fax: (602) 225-5295

16. Any cooperator contributions made under this instrument do not be direct reference or implication convey Forest Service endorsement of the cooperator's products or activities.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

**US DEPARTMENT OF AGRICULTURE**  
Tonto National Forest

**STATE OF ARIZONA**  
Department of Transportation

By KARL SIDERITS  
Forest Supervisor

By SUSAN TELLEZ  
Contract Administrator

Date \_\_\_\_\_

Date \_\_\_\_\_

The authority and format of this instrument  
Have been reviewed and approved for signature.

By Loretta Orona  
LORETTA ORONA  
Grants & Agreements Specialist

Date 10/30/03

**Financial Mitigation Plan**  
**State Route 188 Phase III**  
**Resort Road – Devore Wash**

Project Description:

Mitigation is intended to be done for the agreed upon priority projects on the Tonto Basin and Globe RD's. This work will include, but not be limited to, the following work type activities:

Boundary Fence constructed along the existing private land or allotment boundaries  
Reconstruct water improvements, including piping, windmill, solar pump, spring and earthen tanks  
Road closure or relocation

These project priorities will be agreed to by the Globe and Tonto Basin Rangers prior to ground disturbing activities being initiated.

After the above priorities are agreed to, the work will be funded starting with priority number 1 and continue down the list until the dollar amount is expended.

|                                     |           |
|-------------------------------------|-----------|
| Priority Mitigation Project Funding | \$126,276 |
| 19.5% Overhead assessment           | \$ 24,624 |
| Total IGA project Estimate          | \$150,900 |



**ARIZONA DEPARTMENT OF TRANSPORTATION**  
**PROGRESS PAYMENT REPORT**

|                          |                            |          |                 |            |
|--------------------------|----------------------------|----------|-----------------|------------|
| <b>Report No.</b>        |                            |          | <b>JPA</b>      |            |
|                          |                            |          | <b>PROGRESS</b> |            |
| <b>Item No.</b>          |                            |          | <b>FINAL</b>    |            |
| Project No.              |                            |          |                 |            |
| TRACS No.                |                            |          |                 |            |
| Name of Project          |                            |          |                 |            |
| Name of Vendor           |                            |          |                 |            |
| <b>REMIT PAYMENT TO:</b> |                            |          |                 |            |
| Date Started             | Estimated Completion Date: | On Going | % Billed        | % Complete |

### SUMMARY OF WORK FOR WHICH PAYMENT IS REQUESTED

[illegible]

|                              |             |                                |        |
|------------------------------|-------------|--------------------------------|--------|
| Submitted By: _____          | Date: _____ | Total:<br>To:<br>Date:         | \$0.00 |
| Approved By: _____           | Date: _____ | Total:<br>Previous:<br>Report: | \$0.00 |
| ADOT Project Manager         |             |                                |        |
| Accepted By: _____           | Date: _____ | Current:<br>Report:            | \$0.00 |
| Joint Project Administration |             |                                |        |